Statement

Insurance Association of Connecticut

Insurance and Real Estate Committee

March 5, 2013

HB 6549, An Act Establishing A Mediation Program For Certain Insurance Policy Claims Arising From A Catastrophic Event

The Insurance Association of Connecticut opposes HB 6549, An Act Establishing A Mediation Program For Certain Insurance Policy Claims Arising From A Catastrophic Event.

HB 6549 would establish a "mediation" program for disputes involving personal risk insurance policies (other than automobile insurance) and condominium policies that involve a loss due to "a catastrophic event for which the Governor has declared a state of emergency". However, HB 6549 sets up a mediation program in name only, a program that is unbalanced and unfair in its construction, which will lead to costly and counterproductive results.

In order for a claimant to use this program, the dispute must only involve $500 or more. This is an extremely low threshold amount, which will only invite misuse of the program and caused marked and unnecessary increases in insurers' administrative costs, which will have to be borne by all policyholders. As written, the new program could be invoked by the claimant immediately after the catastrophic event, resulting in needless usage of the program since the standard claims process was not given a chance to work.

HB 6549 would improperly apply the program to coverage issues (lines 120-121). Interpretation of insurance contracts to determine coverage issues should not be subject to mediation, as those interpretations need to be consistent and predictable, and are properly a matter for the courts, as they have always been. Leaving coverage interpretation to the discretion of mediators in this program will create a confusing and unfair range of interpretation regarding the same insurer's contract. Mediation should be limited to disputes over how much is to be paid.

HB 6549 states that "the insurer shall bear all costs of conducting a mediation proceeding". Is the insurer to pay all of the insured's costs, including fees and attorney's costs? The insured's incentive to come to a reasonable agreement in mediation is greatly reduced by the fact that he or she has no "skin in the game". There are no caps placed on the insurer's ultimate financial responsibility, and fees are nonrefundable, even if the insurer pays the fees and the insured cancels the hearing.

HB 6549 also contemplates crediting an insurer's "account" with the Department or the Department's administrative designee if it is determined the only coverage available is through the National Flood Insurance Program. It is not clear what regulatory authority the Department has to make such a determination or to return such money in an account.

HB 6549 does not establish any clear standards for mediators, other than the requirement that they not have worked for insurers or the Department in the last 12 months. Apparently individuals whose job involves the representation of claimants would be permitted to be mediators.

In subsection (b)(3), HB 6549 allows wide-ranging subpoenas to be issued relative to the mediation. Such an authority is contrary to the nature of mediation. HB 6549 sets up this program as more of a judicial proceeding than a mediation. Insurers apparently are responsible for paying for independent experts deemed necessary by the mediator, along with any costs associated with the production of documents, papers and records. Subsection (b)(3) also contains other language more appropriate for binding arbitration, not mediation, including the assessing of retroactive interest and the issuance of written decisions providing remedies. The mediator should only be facilitating a discussion between the parties. Traditionally, mediation is part of on-going settlement discussions and no aspect of that mediation should be admissible in any other proceeding.

As HB 6549 itself acknowledges, the standard insurance policy already has within its terms an appraisal process. If the insurer and the insured fail to agree on the amount of loss, either party may demand an appraisal of the loss. Each party chooses an appraiser, and the two appraisers choose an umpire. A decision agreed to by any two of those three persons sets the amount of loss, which is binding. The contractual appraisal process is an efficient and fair way to resolve disputes over damage amounts.

IAC must oppose HB 6549 and urge its rejection, as it would establish an unfair, costly and contradictory process that does not equate to a balanced mediation of disputes between individuals and their insurers.